IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No.665 of 2005
Date of decision 30. 8 .2007

Smt. Manbhari Devi Goyal .. Appellant

Versus

Commissioner of Income Tax, Ludhiana and another .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Akshay Bhan, Advocate for the appellant
Mr. Vivek Sethi, Advocate for the respondents.

M.M.Kumar, J.

This appeal filed under Section 260A of the Income Tax Act,1961 (for brevity 'the Act') by the assessee claims that substantial questions of law would emerge from the order dated 28.9.2005 ( Annexure P.3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A' , Chandigarh in ITA No. 8/ Chandi/2003 in respect of the assessment year 1995-96. At the time of hearing, the following substantial questions of law were pressed by the learned counsel for the assessee:

" i)Whether in the facts and circumstances of the present case, the action of the authorities below in framing assessment under Section 147 when all disclosures had been duly made by the son of the appellant i.e. Sh. Ashok Goyal in his return for the year 1995-96, is legally sustainable in the eyes of law;

ii) Whether in the facts and circumstances of the present case, the action of the authorities below in holding the investments to be unexplained in the hands of the appellant when the source with regard to the same had been fully explained by the appellant and the fact that when the same has been taxed in the

hands of one assessee, the same cannot be again taxed in the hands of the other, is legally sustainable in the eyes of law?"

Brief facts of the case are that the assessee had filed her return of income under Section 139(1) of the Act. A search was conducted under Section 132 of the Act at the office and residential premises of the assessee's family at New Delhi and Ludhaina which resulted into discovery of certain incriminating documents and unaccounted assets which were seized. Consequently a notice under Section 148 of the Act was issued on 4.2.1998 to the assessee calling for the return of income. She filed the return declaring total income of Rs.18,560/-. The Assessing Officer framed assessment under Section 143(3) of the Act on 24.3.2000 at an income of Rs.5,63,522/-. The only addition made is on account of unexplained jewellery of the value of Rs. 5,44,962/-. The jewellery had been found in the locker Nos. 625 and 924 A as well as at the residence of the assessee. The entire jewellery found in the lockers of Punjab and Sind Bank and UCO Bank were in the joint names of the assessee and her husband and the Assessing Officer held the same to be owned by the assessee as no item of jewellery used by the male member was found. Feeling aggrieved the assessee filed an appeal before the Commissioner of Income Tax (Appeals) who upheld the addition of Rs. 5,44,962/-. On further appeal to the Tribunal the assessee has been granted relief and her appeal has been partially allowed. Paras 5 and 6 of the order of the Tribunal are reproduced hereunder for facility of reference:

" We have given our direful consideration to the rival contentions. In our considered view, the addition in respect of the jewellery belonging to the assessee has got to be considered

in the hands of the assessee in the absence of any evidence at the time of search or in the course of assessment proceedings to the effect that the part of the jewellery belonged to other family members. The jewellery has been found at the residence of the assessee as well as in two lockers. The main jewellery has been found in the lockers which were in the name of the assessee and her husband. It was never contested before the Revenue Authorities that the jewellery attributed to the assessee, did not belong to her. Infact the jewellery has also been found in the possession of other family members and the same has not been added in the hands of the assessee. The mere fact that one of the family members has made the declaration which has not been accepted by the revenue department and has subsequently approached the Settlement Commission with the declaration, in our view is not sufficient to exclude the addition on account of unexplained jewellery in the hands of the assessee. The contention advanced on behalf of the assessee that there is double taxation, is worth consideration but one cannot loose site (sight ?) of the well settled position of law that assessment should be made in the right hands and claim of double taxation can be considered in the hands of a person where the addition is not justified. We have been informed that the Settlement Commission has admitted the petition filed by the assessee's son in which the addition on account of the entire jewellery found to be undisclosed at the time of search, has been offered for taxation. The Settlement Commission, we have been

informed has not yet decided the said petition.

It would be open to the assessee to exclude the jewellery assessed in the hands of the assessee if the same has been offered for taxation in the Settlement petition.As far as the present appeal is concerned, we are of the view that the addition on account of excess jewellery found belonging to the assessee, is justified in the hands of the assessee. We, however, find merit in the contention advanced on behalf of the assessee that there is a calculation mistake committed by the Assessing Officer. The Assessing Officer has worked out the gross weight of the gold jewellery as 1734.100 gms. The net weight was determined at 1239 gms. While working out the difference, the Assessing Officer has mentioned the net weight of the jewellery of 1239 gms. from the net weight of 610 gms. has been reduced. The remaining unexplained gold jewellery has been worked out to 1124 gms. There is apparent mistake as the difference works out to 629 gms. Only. This mistake committed by the Assessing Officer is that he has deducted 610 gms as per the wealth tax return from the gross weight of 1734.100 gms. Notwithstanding the fact that he has mentioned the jewellery declared as per wealth tax return at 610 gms. net weight as also the jewellery found in the course of search at 1239 gms.(net weight)., As such, the addition on account of excess jewellery found at the time of search of 629 grams works out to Rs. 2,89,340/- as against Rs.5,17,040/- worked out by the Assessing Officer. The assessee thus gets a relief of

Rs.2,27,700/- which is granted."

It is thus evident that the Tribunal has further granted relief to the petitioner assessee to the tune of Rs.2,27,700/- by knocking out addition on account of excess jewellery at the time of search which was calculated to be 629 grams. It has further been observed by the Tribunal that it would be open to the assessee to exclude the jewellery assessed in the hands of the assessee if the same had been offered for taxation by her son before the Settlement Commission.

After hearing learned counsel, we are of the considered view that these are pure findings of fact recorded by the Tribunal and satisfactory relief has been granted to her. No question of law as claimed by the assessee would arise for determination of this Court. The appeal is wholly devoid of merit and the same is accordingly dismissed.

**(M.M.Kumar)**
**Judge**

**(Ajay Kumar Mittal)**
**Judge**

**30.8.2007**
**okg**